

CHAPTER 960
HURRICANE DEDUCTIBLES
STATEMENT OF BASIS OF ADOPTED RULE AND
SUMMARY OF COMMENTS

Introduction

The Superintendent of Insurance held a public hearing on July 7, 2014 to receive public comments regarding the proposed adoption of Bureau of Insurance Rule 960, Hurricane Deductibles. This was the second proposed rule regarding hurricane deductibles. On March 14, 2014, the Superintendent had held a public hearing on an earlier proposal, which was not adopted. He subsequently developed the current proposal in response to comments received at the March 14th hearing.

The following persons spoke at the July 7th hearing:

- Larry Alan, New England Government Relations, Nationwide Mutual Insurance Company (Nationwide)
- Gary Henning, Vice President Northeast Region, American Insurance Association (AIA)
- Bruce C. Gerrity, Attorney, Property Casualty Insurers Association of America (PCI) and American Insurance Association (AIA)
- Daniel J. Bernier, Attorney, Maine Insurance Agents Association (MIAA)
- Charles C. Soltan, Attorney, Maine Association of Insurance Companies (MAIC) and National Association of Mutual Insurance Companies (NAMIC)

A written comment period was open until July 18, 2014. The Bureau received written comments from Nationwide, PCI, AIA and State Farm Fire & Casualty Company (State Farm).

Outline of Proposed Rule with Summary of Comments

Maine law, 24-A M.R.S. § 3061, requires that the Superintendent adopt routine technical rules concerning procedures and standards for insurers who use hurricane deductibles in policies covering owner-occupied residential properties having four or fewer apartments. The proposed rule provides in part that insurers may apply hurricane deductibles only while a hurricane warning issued by the National Weather Service (NWS) is in effect for a NWS forecast zone that includes any part of the municipality in which the insured property is located and for 24 hours after the NWS has terminated the last hurricane

warning for that zone. The rule also requires that insurers notify policyholders if hurricane deductibles apply to their policies.

Commenters generally expressed appreciation for the changes made after the first public hearing. As with the prior version of the proposed rule, most criticism of this draft focused on the Superintendent's goal that hurricane deductibles should apply only where hurricane warnings have been issued.

Forecast Zones

Comments. Nationwide acknowledged that the forecast zones would be convenient because they are already in use but expressed concern that this approach would raise "potentially significant complications." Nationwide mentioned two. First, some municipalities lie in more than one zone. Citing Connecticut and Rhode Island (except for Block Island) as examples, Nationwide said that coastal states typically allow insurers to apply hurricane deductibles to the entire state when the trigger is met anywhere in that state. Second, the forecast zone approach has the potential to create "claims chaos following a hurricane." Nationwide acknowledged Maine's "sheer size" but felt that there would be "a lot of claim issues."

AIA also expressed preference for a "whole state" approach but asked that the Superintendent consider using ZIP codes to define zones. AIA said that its members are used to dividing territory by county and ZIP codes but not by NWS forecast zones. AIA asked that the Superintendent list the ZIP codes by forecast zone or give other guidance on how to use the zones.

State Farm's primary concern was that the forecast zones do not always follow municipal, county, or ZIP code-based boundaries. The company said that using forecast zones would "pose a challenge to our underwriting and claims practices" but that it would "ease the burden on insurers and increase understanding among consumers" for the Superintendent to provide a map that shows the forecast zones and county lines or ZIP codes. State Farm said that "drawing lines that determine who will be affected by an insurance provision will inevitably cause confusion among consumers who live in close proximity and are impacted differently by the Rule." It cited the divisions that the forecast zones create in York and Cumberland Counties as being problematic. State Farm asked that the Superintendent in effect change the phrase "any part of the municipality" provision at Paragraph 4(A)(1) to "any part of a county included in a forecast zone."

MIAA commented that the boundaries should be clear and asked that the Superintendent consider tying the forecast zones to ZIP codes and posting that information on the Bureau's web site. MIAA acknowledged that this might be problematic where ZIP codes apply to more than one town. MAIC and NAMIC also said that it would be helpful for the Bureau to post a map on its web site that shows an overlay of forecast zones on municipal boundaries.

Response. The insurers' first objection to the forecast zone approach is essentially that it draws lines that are new to them. The Superintendent rejects this objection for several reasons. Insurers regularly assess risk based on lines drawn not only geographically but also between groups of people. Thus, rates for home or vehicle owners who live in one

town might differ from rates for people who live in a different town, rates for youthful male drivers are generally higher than those for youthful female drivers, and rates for middle-aged drivers of either gender are generally lower than those for almost all youthful drivers. In short, insurers are used to drawing lines. Furthermore, there is a high degree of correlation between the forecast zones and geographic boundaries already familiar to insurers – county and municipal lines. Paragraph 4(A)(1) addresses the concern with towns that lie in more than one forecast zone. It provides that an insurer may apply a hurricane deductible when the NWS issues “a hurricane warning for a forecast zone that includes any part of the municipality in which” the insurer’s risk is located. The Superintendent will post on the Bureau’s web site a map that shows an overlay of the forecast zones on municipal boundaries. That map should help resolve the vast majority of questions related to zone boundaries that cross through municipalities.

Unspecified concerns over consumer confusion underlie the insurers’ second objection. Those concerns appear to boil down to the point that policyholders who are on the inland border of a coastal forecast zone might wonder why they must absorb through higher deductibles a higher share of storm-related losses than must their neighbors in the abutting inland zone. However, the “drawing of lines” is fundamental to insurance risk classification. For example, a good driver who lives in Portland might just as easily complain that he pays higher automobile insurance rates than his claim-prone brother who lives in Falmouth.

The Superintendent understands that, even as they rely on drawing their own lines in rating risks, insurers seek simplicity and clarity in the rules that they must follow. He believes that the proposed rule balances those goals with the challenges that Maine’s unique geography presents. It is the Superintendent’s view that a hurricane deductible should be no more and no less than what it purports to be: a means of lowering an insurer’s risk and thereby increasing its ability to honor all of its contractual obligations in the case of a specific, large-scale meteorological event. A person of ordinary understanding, upon reading the term “hurricane deductible,” would expect that this deductible would apply only when his or her property suffers a loss caused by a hurricane passing over or reasonably near that property.

Hurricane Deductible Trigger and Duration (Paragraph 4(A)(1))

Comments. PCI would like to see the trigger in Paragraph 4(A)(1) changed from the issuance of a hurricane warning to a hurricane watch. PCI observed that the National Hurricane Center issues hurricane watches 48 hours before tropical storm force winds are expected because “hurricane preparedness activities become difficult once winds reach” that level. State Farm said in effect that the hurricane warning threshold is too short and does not account for the varying effects that hurricanes can have over time and as they move. It offered its “experience handling hurricane claims” as evidence that allowing the deductible to be effective for a longer period – such as 72 hours after the last watch or warning ends – reduces disputes over when hurricane related damage occurred. The company also said that shorter effective periods increase consumer confusion. State Farm asked that the Superintendent extend the effective period to 72 hours.

Response. The Superintendent declines to extend the period that hurricane deductibles may be in effect. Hurricane preparedness is a different issue than when the hurricane

deductible should be in effect.. The Superintendent's view, stated above, is that a hurricane deductible should apply only if an insured's property suffers a loss caused by a hurricane passing over or reasonably near the property. A watch leaves open the larger possibility that the hurricane might downgrade or not strike land at all. Extending the period after the last warning has ended leaves open the likelihood that damage will occur not because of the hurricane but still be subject to the higher deductible.

Loss (Paragraph 4(A)(3))

Comment. Concerning damage coverage, State Farm recommended revising Paragraph 4(A)(3) to "apply to all direct and consequential losses caused by or resulting from wind, precipitation, or wind-driven objects." The company said that this change would clarify that loss of use and loss assessments, for example, would also be subject to hurricane deductibles.

Response. The Superintendent accepts this suggestion. Homeowners policies generally insure against "direct physical loss," in the property coverage section. They also cover losses that result indirectly from the property damage, such as additional living expenses and, in the condominium context, loss assessments. The Superintendent's intention is that an insurer's hurricane deductible should apply to all damage resulting from wind, precipitation or wind-driven objects that occur during the time that the deductible is in effect and to losses resulting indirectly from that damage. Adding the phrase that State Farm recommended also renders the proposed Paragraph 4(A)(4) unnecessary, and the Superintendent has therefore deleted it and renumbered provisions accordingly.

Notice of Hurricane Deductible (Subsection 5(C))

Comment. State Farm asked that insurers have the option of putting the hurricane deductible notice on a separate sheet instead of on the policy's declarations page. It cited limited space on its declarations page forms and the cost of reprogramming to support its request.

Response. The Superintendent declines to make this change for several reasons. The Superintendent reviewed State Farm's declarations pages used in Maine for homeowners (FP-7006.5C), manufactured homes (FP-7090.4C), renters (CMP-4000) and dwelling fire coverages. Those forms appear to have enough room for the minimal notice that the proposed rule now includes. Also, programs that channel documents into mailing packages, whether they are policies or cancellation notices, are not infallible. Having the deductible notice on the declarations sheet helps eliminate the argument that the policy package did not include this important notice.

Erratum (§§ 4(A)(5) and 5(C))

Comment. AIA pointed out that proposed Paragraph 4(A)(5) says that the hurricane deductible may be stated as a specific dollar amount or as a percentage of the "insured property's value." However, Subsection 5(C) discusses deductibles as a percentage of the "policy's property coverage." These figures could be different, as in the case of replacement cost coverage. Because of the potential for confusion, AIA suggested revising Paragraph 4(A)(5) to read "a percentage of the policy's property coverage."

Response. The Superintendent agrees with this comment and has therefore revised the relevant provision.

Rule Effective Date (Section 7)

Comments. Nationwide asked that the rule not be effective until the end of the current hurricane season, November 30, so that insurers will have enough time to implement the rule. State Farm asked that the rule's effective date be at least 180 days after filing with the Secretary of State to accommodate what it expects to be a "lengthy reprogramming effort."

Response. The insurers did not explain what they must do to comply with this rule. However, the Superintendent thinks that this request is reasonable and has therefore revised Section 7 to make the rule effective April 1, 2015.